



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 25, 1998

The Honorable Shelia Bailey Taylor  
Chief Administrative Law Judge  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, Texas 78711-3025

OR98-0531

Dear Judge Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112963.

The State Office of Administrative Hearings ("SOAH") received a request for correspondence with the Texas Natural Resource Conservation Commission (the "commission") regarding "Rider Number 2" and any contracts with the commission for specified time periods. You state that SOAH's FY1997 and FY1998 contracts with the commission are not exempt from disclosure. You contend, however, that certain requested documents are excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.'

Section 552.111 of the Government Code excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 (1993) at 4-5.

The documents at issue consist almost entirely of the opinions and recommendations of SOAH and the commission as to how "Rider 2 in Article 9 of the Appropriations Act" should be interpreted. You state the following:

[T]he correspondence at issue directly relates to questions of policy because it goes to the heart of SOAH's enabling legislation which establishes an independent forum for hearing and mediating administrative cases . . . [and] is a frank discussion between the two agencies (SOAH and the TNRCC) that centers upon the impact of certain proposed contractual provisions upon SOAH's independence.

Under these circumstances, we find that SOAH may withhold the opinion portions of the documents at issue from disclosure under section 552.111. We have marked these portions of the documents accordingly. The remaining portions of the documents which consist of severable factual information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 112963

Enclosures: Marked documents

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(w/o enclosures)